



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~WILLIAMSON~~
ATTORNEY GENERAL

Honorable Eugene Brady
County Attorney
Hunt County
Greenville, Texas

Dear Sir:

Opinion No. 0-4991

Re: Can the county treasurer collect for the officers Salary Fund stated commissions for receiving and disbursing money coming into his hands by virtue of sale of bonds voted at Special Bond Election?

Your letter of November 23, 1942, requesting the opinion of this department on the above stated question reads as follows:

"I will appreciate an opinion from you on the following subject:

"Can the County Treasurer collect for the Officers Salary Fund stated commissions for receiving and disbursing money coming into his hand by virtue of sale of bonds voted at Special Bond Elections."

"The facts are as follows: In 1941 the residents of Precinct Four of this County voted to issue Bonds for Road improvements under the provisions of Article 752 a et. seq. These bonds were promptly sold, the money deposited with the County Treasurer and some of the money has been paid out on warrants properly drawn on such fund.

"In 1942 the residents of this county voted bonds for the acquisition and improvement of land for an Air field. These bonds were promptly sold, the money deposited with the County Treasurer and some of the money has been paid out on warrants properly drawn on such fund.

"In 1935 and for each subsequent year the salary of the County Treasurer has been set at

\$600 by proper order of the Commissioners Court. Hunt County compensates all County Officers on a salary basis.

"In Article 3912e, Sec. 4, it is provided for the establishment of an officers salary fund in such county. Section 5 provides 'It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official services performed by them. As and when such fees are collected they shall be deposited in the Officers Salary Fund'.

"Article 3941 is as follows: 'The county treasurer shall receive commissions on the moneys received and paid out by him, said commissions to be fixed by order of the commissioners court as follows: For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent and not exceeding two and one-half per cent for paying out the same--'

"Article 3943 limits the amount of commissions allowed to the Treasurer in any one year. In this county such limit would be \$2020.00 per annum.

"The determination of the right of the county treasurer to fees upon a bond issue depends upon whether the county has received or is entitled to receive cash from the sale of its bonds'. 11 Tex. Jur. pg. 595.

"If commissions (to be collected by the County Treasurer) have not been fixed by order of the Commissioners' court the County Treasurer is entitled to receive the maximum fees of the statute'. 11 Tex. Jur. pg. 598.

"While under the order of the Commissioners Court and the above quoted provisions the County Treasurer would be entitled to receive only \$600 as his compensation it seems that it would be his duty to collect and pay to the Officers Salary Fund the full statutory commissions of $2\frac{1}{2}$ per cent for receiving and $2\frac{1}{2}$ per cent for paying out the money realized from the sale of such bonds.

" "

Hunt County has a population of approximately 48,717 inhabitants according to the 1940 Federal Census and the County officials of said County are compensated on an annual salary basis by virtue of the Salary Law of this State.

Under Section 1 of Article 3912e, Vernon's Annotated Civil Statutes, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated on a salary basis, any fee or commission for the performance of any or all of the duties of their offices, save only the tax assessor and collector who shall continue to collect and retain for the benefit of the Officers Salary Fund or Funds provided for in the Act, all fees and commissions which he is authorized under the law to collect. The only fees, commissions and costs which the officers of the county, save only the tax assessor and collector, are authorized by law to collect, are those fees, commissions and costs that private parties are required to pay under the law, and costs in civil cases by the State.

Accordingly, the commissions which the county treasurer would be authorized, otherwise, to receive moneys of the county received and disbursed by him, under Articles 3941-3943, inclusive, Vernon's Annotated Civil Statutes, may no longer be collected from the county. To allow such collections would do violence to Section 1 of Article 3912e, supra, in that the county would thereby be charged with and pay such commissions for the performance by the county treasurer of his official duties.

With reference to the bonds issued by Precinct 4 of Hunt County, if the road district funds are county funds, the county treasurer is clearly not entitled to any commission for handling them under the express provisions of Article 3912e, supra. If they are not county funds, and there is no statute that we have been able to find allowing the treasurer commission for handling them, then the treasurer can not collect a commission, for none has been fixed and it has been made his duty to receive and disburse said funds by Article 752e, Vernon's Annotated Civil Statutes.

The county treasurer would not be entitled to receive any commissions for handling funds acquired by the sale of bonds issued and sold by the county for the acquisition and improvements of land for an air field under the express provisions of Article 3912e, supra. Therefore, we respectfully answer the above stated question in the negative.

Trusting that the foregoing fully answers your inquiry, we are

Honorable Eugene Brady, page 4

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Ardell Williams
Ardell Williams
Assistant

AW:mp:wc
Encl.

APPROVED DEC 3, 1942
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman